BOOK REVIEWS.

A TREATISE ON EQUITY JURISDICTION. By J. N. POMEROY, Third Edition by J. N. POMEROY, JR. Four vols. San Francisco: Bancroft-Whitney Co. 1905. pp. lviii, 3525.

Convinced that unless something were done, we should lose, as a result of our consolidation of law and equity in the same court, a considerable part of our equitable system and principles, Professor Pomeroy undertook the composition and publication of his great work. In his preface he expressed the hope that it might aid the profession "in their judicial and forensic duties and * * * accomplish something for the promotion of justice, righteousness, and equity in the legal and business transactions and relations of society," and so "maintain the equitable jurisprudence in its true position as a constituent part of municipal law." How fully that reverent hope has been realized, the cases collected by his present editor abundantly testify; for court after court is shown to have cited and relied upon his sound enunciation of fundamental principles. The treatise was essentially different in its classification and treatment of the subject matter, as well as in its purpose, from any of the works that preceded it. Fonblanque, Kames and others, of the earliest writers had given little more than elaborate outlines of their subject; the great works of Story and Spence had treated the subject from the standpoint of its historical development and the extent of its jurisdiction. Professor Pomeroy set to work to collect and analyze the cases and to deduce from them the fundamental principles that governed the administration of equity. He did his work well, and, as already suggested, its influence has been profound. A new edition of such a work must, if properly done, be of great value to the profession.

The present edition of the work is issued in four volumes, the first edition was in three. There are cited approximately twenty-nine thousand cases, between six and seven thousand more than in the second edition. The type of the text is large and clear. The proof reading has been done with care. In most instances a short statement follows or precedes the citation of a case, which gives its holding, usually to the point. With one exception noted later, no interpolations have been made in the text, the editor stating that he believed "the peculiarly authoritative character conceded by the courts to that text required that no chance should be afforded of confusing the author's language with his own." The results of the editor's labors have therefore been collected in notes.

The subject matter of these notes falls into three groups:

First, that group in which are collected the cases which have relied on or have quoted the author's text. These collections are of great practical value and at once demonstrate how widely and deeply the courts have been influenced by the work. In the reviewer's opinion

the collection of these cases constitutes by far the most important part of the present editor's work.

Secondly, that group in which the Early English and American authorities, omitted by the author, have been collected. E. g. § 197. n. (a). These are not usually of such a character as to evidence deep research; and the number of cases might, it would seem, have been largely curtailed. The author covered the same field himself with great thoroughness, and it appears a fair presumption that he took all that he hought worth while.

Thirdly, that group in which are placed the recent cases, not quoting or citing the text, but illustrating the doctrines therein laid down. Where, as in some instances, the decisions have cleared up matters put in doubt in the text, as in n. (2), § 1028, these additions seem very desirable; but where, as in other instances, they are added to establish such elementary principles as "that the trustee gets the legal title" or that the trustee "does not enjoy the property beneficially," § 939, n's (a) and (b)., it would seem that the space might well have been saved. It is of course always an open and debatable question how far a treatise should be a digest of authorities as well, but the present editor has certainly come near to the limit that can be safely allowed, and a subsequent editor may well scan the citations with a view to eliminating the less desirable.

The notes are at times quite elaborate, for example those on Concurrent Jurisdiction, § 178, Judicial Interpretation of Jurisdiction, § 293, the Trust Fund Theory in Corporations, § 1046, Recovery of Specific Chattels, § 185, n. (c), Charitable Trusts, including those for Religious Purposes, § 1021, and Jurisdiction to Prevent a Multiplicity of Suits. § 242 et seq. Indeed as a whole the notes indicate much painstaking and labor.

The one textual interpolation has been placed, and with good reason, in the section, Jurisdiction to Prevent a Multiplicity of Suits, §§ 251½ and 251¾. As suggested by the present editor, Professor Pomeroy was the first to treat adequately this important head of equity, and his whole work contains no better analysis of cases and deduction of principles than is to be found here. However, it must be said, that the learned writer had here, as elsewhere, a theory to uphold and he marshalled to the task as authorities both holdings and dicta, though with true lawyer-like consistency distinguishing all of the first and discrediting all of the latter where they failed to support, or came in conflict with, his own view,—let the courts propounding them be howsoever distinguished. E. g. p. 438, quoting Cooley, J., in Youngblood *v.* Sexton (1875) 32 Mich. 406, 410; p. 427, quoting from Chancellor Vroom in Marselis *v.* Morris Canal Co. (1830) 1 N. J. Eq. 31. As a result of his examination, the author laid down, as a test for the exercise of the jurisdiction, that there must be among the parties a community of interest in the questions of law and fact involved, or, in the kind and form of relief demanded. §§ 260, 269. While, properly understood, this may be accepted as a correct statement of the weight of authority, unfortunately the author used certain other general expressions, such as "In fact the 'multiplicity of suits' which is to be prevented *constitutes the very inadequacy of legal methods and remedies* which calls the concurrent jurisdiction into being

under such circumstances, and authorizes it to adjudicate upon purely legal rights, and confer purely legal relief," and these have been adopted by some of our courts to reach and justify results which cannot be brought within the principles of the cases, and it may be doubted if within the limits of Professor Pomeroy's theory. One of the best known dissents from the author's broadly expressed doctrine is the "Tribette Case," (1892) 70 Miss. 182 (considered as overruled by *Hightower etc.* v. *Railroad Co.* (1904) 36 Southern 82, and *Tisdale* v. *Insurance Co.* (1904) id. 568, though neither case cites the "Tribette" case), and a careful reading of the authorities leaves it by no means certain that the Professor had the better of the Judge. The present editor takes occasion to criticise this case § 257, n. (c); § 264, n. (b), but his criticism is not more convincing than his author's statement of the principle. It seems not too much to say that this doctrine of jurisdiction to prevent a multiplicity of suits is being at present greatly extended at the expense of certain other fundamental principles, such as the right of trial by jury. This is well illustrated by the recent case of *Fegelson* v. *Insurance Co.* (1905) 103 N. W. 496, in which an insurer was permitted to join in one suit six insurance companies, having six different policies, all the subject of distinct contracts, on the theory that there was among them some common issue of law and fact. Under such rulings it seems well to have an interpolation in the text (a thing usually to be condemned) which states what appears an obvious and fundamental qualification of the broadly expressed doctrine of the text, that "the equity suit must result in a *simplification or consolidation of the issues;* if, after the numerous parties are joined, there still remain separate issues to be tried between each of them and the single defendant or plaintiff, nothing has been gained by the court of equity's assuming jurisdiction."

That part of the work which the author designated "Part Fourth: The Remedies and Remedial Rights which are Conferred by Equity Jurisprudence," the present editor has amplified into two additional volumes (volumes V and VI of the series, which will be reviewed later); and to avoid duplication, he has left the original text and notes without any annotation with the recent cases. This seems unfortunate. A careful selection of cases might well have been cited here, even at the expense of duplicating, for this is the work with which the profession is familiar; and it strikes one as rather strange not to find, for example, a citation to such a well known case as *Day County* v. *Texas* (1887) 68 Texas 526, in support of one of the author's favorite theories, which in the original text stood in need of confirmation. Moreover this highly equitable doctrine that a suit to remove cloud on title should lie even where the instrument is void on its face, seems to be gaining ground, see *Flint Land Co.* v. *Fochtman* (1905) 103 N. W. 813, and it is so eminently just that no occasion should be lost to foster it.

It must be said, however, in conclusion, that the editor has done his work as a whole very well indeed, and members of the profession cannot afford to content themselves with the older editions of this great work, for the new one gives much that is well nigh invaluable.